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OFFICE OF PETITIONS

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|---------------------------------|---|----------------------|
| In re Application of | : | |
| Jung A. Lee | : | |
| Application No. 10/822,478 | : | DECISION ON PETITION |
| Filed: April 12, 2004 | : | |
| Attorney Docket No. 2100.004600 | : | |

This is a decision on the petition filed July 12, 2004 requesting that the above-identified application be amended to include drawings containing Figures 6-10B and to retain its filing date of April 12, 2004.

The petition is dismissed.

Should petitioners wish to accept the July 12, 2004, filing date with an indication that Figures 1-10B were present in filing, they must promptly, *i.e.*, within TWO (2) MONTHS, pursuant to 37 CFR 1.181(g), renew this petition before the Director of the Office of Initial Patent Examination, and so state their desire.

The application was filed on April 12, 2004. However, on June 23, 2004, the Office mailed a "Notice of Omitted Items" stating that the application had been accorded a filing date of April 12, 2004, and advising applicant that the drawings of Figures 6-10B described in the specification appeared to have been omitted.

In response, the present petition was filed requesting, in effect, that the application be amended to include the drawings of Figure 6-10B described in the specification, and the application retain its current filing date. Petitioner asserts that as the specification fully describes the subject matter of these drawings there is no question of the prohibited introduction of new matter.

The mailing of a "Notice of Omitted Items" permits the applicant to either: (1) promptly establish prior receipt in the PTO of the drawing(s) at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the missing drawings were in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted

drawings in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted drawing(s) with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such drawing(s) and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the "Notice of Omitted Items" (37 CFR 1.181(f)).

In this case, petitioner neither asserts that the missing drawings were deposited on April 12, 2004, nor requests the July 12, 2004, (the date the drawings were supplied) filing date. Clearly, Figures 6-10B were intended to be a part of the application. The question of new matter is not an issue here. Figures 6-10B were not present in the application file on April 12, 2004, the date of deposit of the application. Therefore, the application cannot be accorded that date as the filing date with the drawing of Figures 6-10B as a part of the original disclosure. Figures 6-10B were simply not filed in the PTO on that date. Accordingly, petitioner cannot retain the April 12, 2004 filing date with an indication that Figures 6-10B were present on filing.

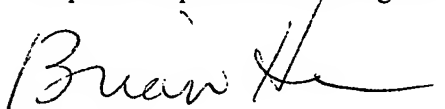
Instead, applicants may seek to amend the application to include the drawings. However, no petition under 37 CFR 1.182 is necessary for that purpose. The primary examiner without petition may enter new drawings so long as those drawings contain no new matter. See MPEP § 608.02(a). However, that is an issue to be raised before the examiner during the course of the examination of this application and as such will not be further considered as a filing date matter.

The application is being referred to the Office of Initial Patent Examination for further processing with a filing date of April 12, 2004, including an indication in Office records that eight sheets of drawings containing Figures 1-5 were present on filing.

Thereafter, the application will be referred to the appropriate group art unit for consideration by the examiner of the petition filed June 12, 2004, as an amendment requesting the entry of new sheets of drawings containing Figures 6-10B.

The petition fee is due on filing the petition regardless of the outcome.

Telephone inquiries concerning this matter may be directed to Marianne Jenkins at (571) 272-3223.



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